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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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IN THE MATTER OF QWEST
CORPORATION'S COMPLIANCE
WITH SECTION 271 OF THE
TELECOMMUNICATIONS
ACT OF 1996

Docket No. T-00000A-97-238

COMMENTS ON STAFF'S PROPOSED PROCEDURAL SCHEDULE FOR THE SECTION 271 SUB-DOCKET

In accordance with the Commission's November 26th 2002 Procedural Order ("the Order") Qwest Corporation ("Qwest") hereby provides its comments on the Procedural Recommendations made by Commission Staff (the "Staff") in its October 4, 2002 Supplemental Report and Recommendation concerning the impact of the unfilled agreements on the pending 271 proceeding ("Staff Report"). As set forth more fully below, Qwest concurs with Staff's procedural recommendations for the 271 "sub-docket" that the Commission established in its November 7th Procedural Order in this proceeding. Specifically, Qwest concurs with Staff's recommendation that evidentiary hearings are not required to resolve the issues set for examination in this docket.

1. Background

On November 7th 2002, the Administrative Law Judge Rodda issued a Procedural Order that established a framework for Commission resolution of pending issues relating to Qwest's 271 application and the Commission's pending 252(e) enforcement

proceeding. The ALJ largely adopted Staff's proposals, including Staff's recommendations that the Commission establish a separate 271 "sub-docket" to (1) address allegations that Qwest interfered with the 271 regulatory process and (2) determine the extent to which additional fines should be assessed for Qwest's alleged interference. The ALJ also adopted Staff's recommendation that the ongoing 252(e) enforcement proceeding separately address the circumstances surrounding and potential remedies for Qwest's alleged failure to file certain CLEC agreements with the Commission. Staff's Report also recommended the following procedural approach for the 271 sub-docket:

- All letters, comments and data responses identified in the Staff's Report automatically become part of the record;
- Parties would be given 10 days to submit additional evidence and to comment on the impact, if any, of certain parties' inability to participate in the 271 process;
- Qwest files its responsive pleading 10 days after any party filings;
- Staff submits its recommendation to the Commission as to the amount of additional fines for Qwest it might propose.

Staff proposes that this docket proceed without evidentiary hearings. The Assigned ALJ now seeks party comments on Staff's proposed procedures for the 271 sub-docket, including the need for a hearing for the sub-docket.

2. Qwest Supports Staff's Proposed Procedural Process For the 271 Sub-Docket

Qwest believes that Staff's proposed procedures for the 271 sub-docket will allow parties to adequately address all relevant issues both prospectively and with regard to past conduct. The Staff's proposal would allow the Commission to adopt a procedure that will permit the remaining issues in the 271 docket to be resolved fully, quickly and separately from the pending 252 proceeding.

As Qwest noted in its October 15, 2002 Comments, Staff correctly concludes in

its Report that any party concerns regarding an incomplete 271 record have been adequately addressed. On July 30 and 31, 2002, Staff held a workshop designed to address any issue from concerned parties that believed they had been precluded from raising in the 271 docket due to some agreement with Qwest. All concerned parties participated fully through testimony and multiple data requests. Staff Report at 3, 17 and 19. Staff correctly noted that this workshop adequately addressed concerns regarding the 271 record. In addition to placing the results of the workshop in the record, Staff's procedural proposal for the 271 sub-docket now gives parties an additional opportunity to present any information regarding this issue to the Commission for its consideration, including recommendations regarding what penalties the Commission should impose on Qwest for any findings that the 271 process was interfered with, and any effect Qwest's alleged conduct should have on the Commission's 271 "public interest" determination. Upon receipt of Qwest's responsive pleading and the Staff's final recommendations, the Commission will have an extensive record upon which to base its findings in this matter.¹

3. There Is No Need For Further Evidentiary Hearings In the 271 Sub-Docket

As noted above, the Staff conducted extensive workshops in July 2002 to provide all parties with a supplemental opportunity to present, on the record, any allegations or concerns regarding any effects Qwest's conduct might have had on the 271 process. Under Staff's proposed procedures, parties can supplement the record with any additional concerns that may exist. Upon receipt of those comments, the evidentiary record in this matter will be complete. Separate evidentiary hearings have been established to address

¹ As the Assigned ALJ noted in the November 27th Procedural Order, "Qwest, the entity that is subject to fines, is entitled by law to request a hearing on the penalties imposed." Order, pg. 2. Qwest reserves that right.

party contentions related to Qwest's compliance with Federal 252(e) requirements. As a consequence, additional hearings in the 271 sub-docket would be unnecessary and redundant.

As Qwest has pointed out in previous filings, while important, the issues underlying the "unfiled agreements" case nevertheless are not appropriate matters for consideration as part of the Section 271 public interest inquiry. The 271 docket simply is not the appropriate vehicle for resolving the legal ambiguities concerning Qwest's obligations under Sections 251 and 252 or other unresolved questions about the interpretation and application of the Act:

As the Commission stated in the *SWBT Texas Order*, despite the comprehensiveness of our local competition rules, there will inevitably be, in any section 271 proceeding, new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors — disputes that our rules have not yet addressed and that do not involve *per se* violations of self-executing requirements of the Act. The section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a section 271 application. . . . [Section 271 proceedings] are often inappropriate forums for the considered resolution of industry-wide local competition questions of general applicability. . . . [F]ew of the substantive obligations contained in the local competition provisions of sections 251 and 252 are altogether self-executing; they rely for their content on the Commission's rules. ^{2/}

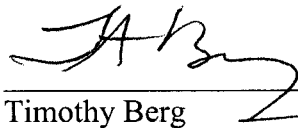
^{2/} See Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237 ¶ 19 (2001), modified, *Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) ("SBC Kansas/Oklahoma Order") (footnotes omitted, emphasis added); see also Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354 ¶¶ 23-27 (2000) ("SBC Texas Order").

Any suggestions by parties to utilize the 271 sub-docket for an open-ended evidentiary inquiry that would delay closure of both the 252(e) and the 271 docket(s) should be rejected because it would impermissibly sidetrack the sub-docket, and in effect turn the 271 docket into just the sort of open-ended inquiry rejected by the FCC.

4. Conclusion

For the foregoing reasons, the Commission should accept the Staff's recommended process for administering the 271 sub-docket it established on November 7th. Given pending matters in the separate 252(e) enforcement proceeding, including the filing of Qwest's testimony in that docket, there is no basis for also conducting evidentiary hearings in the 271 sub-docket. If implemented promptly, Staff's recommended schedule will afford all interested parties with adequate opportunity to address what effect, if any, the unfilled agreement controversy should have on the Commission's public interest determination in 271, and what penalties may be appropriate.

RESPECTFULLY SUBMITTED this 10th day of December, 2002.



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